

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
BID PROTEST**

PLANETSPACE INC.,

Plaintiff,

v.

THE UNITED STATES,

Defendant,

**REDACTED
VERSION**

Case No. _____

DECLARATION OF DR. CHIRINJEEV KATHURIA

I, Dr. Chirinjeev Kathuria, pursuant to 28 U.S.C. § 1746, state as follows:

1. I am the Chairman of PlanetSpace Inc. ("PlanetSpace"). I have been employed with PlanetSpace since 2005, when I co-founded the company.
2. PlanetSpace is headquartered in Chicago, Illinois and focuses on the development of a broad spectrum of commercial space services that include cargo and crew to the International Space Station ("ISS"), point-to-point global travel, space tourism, and satellite orbital delivery.
3. In 2007, PlanetSpace entered into a Space Act Agreement with the National Aeronautics and Space Administration ("NASA") to facilitate the commercialization of Low-Earth-Orbit as part of NASA's Commercial Crew and Cargo Program. Under this Space Act Agreement, NASA shares information that helps PlanetSpace understand, *inter alia*, the project requirements for space station crew and cargo transportation, launch vehicles, and spacecraft.

PlanetSpace uses such information to develop the vehicles, systems, and operations needed to transport crews and cargo to and from a low-Earth orbit destination (such as the ISS).

4. I hold Bachelor of Science and Doctor of Medicine degrees from Brown University, and a Master's in Business Administration degree from Stanford University.

5. I submit this declaration in support of PlanetSpace's action to set aside and enjoin NASA's decision to override the stay imposed by the Competition in Contracting Act when PlanetSpace filed a bid protest with the U.S. Government Accountability Office ("GAO") challenging NASA's contract awards to Space Exploration Technologies Corporation ("SpaceX") and Orbital Sciences Corporation ("OSC").

A. Background on CRS Procurement

6. On April 14, 2008, NASA issued Solicitation No. NNJ08ZBG001R, which sought proposals for a contract to perform space transportation services and to supply cargo to the ISS from January 1, 2009 through December 31, 2015 (the "CRS contract"). PlanetSpace submitted a proposal in response to this solicitation for the CRS contract.

7. For its proposal, PlanetSpace assembled a team of partner companies that, along with PlanetSpace, brought together the necessary expertise in the design and manufacturing of components and the delivery of services for the CRS contract. The PlanetSpace Team included PlanetSpace, the Lockheed Martin Corporation ("Lockheed"), Alliant Techsystems Inc. ("ATK"), and the Boeing Company ("Boeing"). Lockheed, ATK, and Boeing are all NASA Human Spaceflight contractors that have made significant independent research and development ("IRAD") investments in space transportation systems.

8. For the PlanetSpace ISS CRS Team, PlanetSpace [REDACTED]

[REDACTED]
Lockheed [REDACTED]

[REDACTED]. ATK [REDACTED]

Boeing [REDACTED]

[REDACTED]. Employees from all four companies staff the CRS team in alignment with their assigned areas of responsibility.

9. PlanetSpace submitted a proposal for the CRS contract. On September 8, 2008, NASA notified PlanetSpace that NASA had included PlanetSpace's proposal in the competitive range. After conducting discussions, NASA invited PlanetSpace to submit a Final Proposal Revision, which revision PlanetSpace submitted on November 10, 2008. On December 23, 2008, NASA notified PlanetSpace that NASA had selected SpaceX and OSC for CRS contract awards.

10. After NASA debriefed PlanetSpace on January 9, 2009, PlanetSpace protested the contract awards to SpaceX and OSC at the GAO on January 14, 2009. I understand that although NASA initially suspended work under the protested contracts, on February 9, 2009, it issued a "Determination to Continue Performance of International Space Station (ISS) Commercial Resupply Services (CRS) Contract after Receipt of Government Accountability Office (GAO) Protest." I also understand that shortly thereafter, NASA issued SpaceX and OSC with notices to proceed with performance.

B. Harm Suffered by PlanetSpace as a Result of NASA's Override Decision

11. By permitting SpaceX and OSC to proceed with performance on the CRS contracts while PlanetSpace's GAO protest remains pending, NASA has harmed PlanetSpace in at least several ways, even if PlanetSpace were to prevail in its GAO protest.

12. As explained in further detail below, NASA's override decision [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13. For these reasons, NASA's override decision will cause significant and irreparable harm to PlanetSpace regardless of whether the GAO, if it were to sustain PlanetSpace's protest, recommends that NASA award a CRS contract to PlanetSpace or recommends that NASA conduct a new competition for the CRS contracts.

C. Harm To [REDACTED]

14. PlanetSpace teamed with Lockheed, ATK, and Boeing [REDACTED]

[REDACTED]

15. I know that [REDACTED]

[REDACTED]

[REDACTED]

16. If SpaceX and OSC are permitted to continue performance on their CRS contracts and receive tens of millions of dollars from NASA for such performance while PlanetSpace's GAO protest is pending, [REDACTED]

[REDACTED]

[REDACTED]

17. If, prior to any GAO decision to sustain PlanetSpace's protest, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] for any re-competition of the CRS contracts and any future PlanetSpace performance of a CRS contract awarded by NASA.

18. In addition to the reasons stated above, PlanetSpace teamed with Lockheed, ATK, and Boeing [REDACTED]

[REDACTED]

19. Because [REDACTED]

[REDACTED], if

SpaceX and OSC are permitted to continue performance on their CRS contracts and receive tens of millions of dollars from NASA for such performance while PlanetSpace's GAO protest is pending, [REDACTED]

[REDACTED]

20. If, prior to any GAO decision to sustain PlanetSpace's protest, [REDACTED]

[REDACTED]

[REDACTED], PlanetSpace would again suffer irreparable harm for any re-competition of the CRS contracts and any future PlanetSpace performance of a CRS contract awarded by NASA.

21. Finally, as noted above, Lockheed, ATK, and Boeing have [REDACTED]

[REDACTED]

[REDACTED]

22. If SpaceX and OSC are permitted to continue performance on their CRS contracts and receive tens of millions of dollars from NASA for such performance while PlanetSpace's GAO protest is pending, [REDACTED]

[REDACTED]. Here, PlanetSpace would again suffer irreparable harm for any re-competition of the CRS contracts and any future PlanetSpace performance of a CRS contract awarded by NASA.

D. Harm To [REDACTED]

23. [REDACTED]

[REDACTED]

[REDACTED]

24. If SpaceX and OSC are permitted to continue performance on their CRS contracts and receive tens of millions of dollars from NASA for such performance while PlanetSpace's GAO protest is pending, [REDACTED]

[REDACTED]. Such a decision would cause irreparable harm to PlanetSpace for any re-competition of the CRS contracts and any future PlanetSpace performance of a CRS contract awarded by NASA.

25. PlanetSpace also [REDACTED]

[REDACTED]

[REDACTED], if SpaceX and

OSC are permitted to continue performance on their CRS contracts and receive tens of millions

of dollars from NASA for such performance while PlanetSpace's GAO protest is pending, [REDACTED]
[REDACTED]
[REDACTED], such a decision would cause irreparable harm to PlanetSpace for any re-competition of the CRS contracts and any future PlanetSpace performance of a CRS contract awarded by NASA.

26. PlanetSpace also [REDACTED]
[REDACTED]
[REDACTED], if SpaceX and OSC are permitted to continue performance on their CRS contracts and receive tens of millions of dollars from NASA for such performance while PlanetSpace's GAO protest is pending, [REDACTED]
[REDACTED]
[REDACTED] would cause irreparable harm to PlanetSpace for any re-competition of the CRS contracts and any future PlanetSpace performance of a CRS contract awarded by NASA.

E. Harm To [REDACTED]

27. [REDACTED]
[REDACTED]
28. I know that since NASA's decision to authorize the continued performance by SpaceX and OSC of their CRS contracts while PlanetSpace's GAO protest is pending, [REDACTED]
[REDACTED]
[REDACTED], PlanetSpace would suffer irreparable

harm for any re-competition of the CRS contracts and any future PlanetSpace performance of a CRS contract awarded by NASA.

F. Harm To [REDACTED]

29. Even if the GAO were to sustain PlanetSpace's protest and recommend that NASA award a CRS contract to PlanetSpace, if SpaceX and OSC are permitted to continue performance on their CRS contracts and receive tens of millions of dollars from NASA for such performance while PlanetSpace's GAO protest is pending, [REDACTED]

[REDACTED]

30. Moreover, [REDACTED]

[REDACTED]

[REDACTED] would also result in irreparable harm.

G. Harm To [REDACTED]

31. If the GAO were to sustain PlanetSpace's protest and recommended a re-competition of the CRS contracts, and if SpaceX and OSC [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I affirm under the penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on February 17, 2009.

Dr. Chirinjeev Kathuria